

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

VS.

NO.: 3:21-CR-107-NBB-RP

JAMARR SMITH, et al.

MOTION TO SUPPRESS

COMES NOW, the Defendant, Jamarr Smith, by and through the undersigned counsel, and files this Motion to Suppress, would state unto the Court as follows:

I.

This case arises out of the robbery of the United States Post Office in Lake Cormorant, Mississippi on February 5, 2018. For many months after the robbery, the government had no suspects; therefore, it used a newly-minted investigative technique involving a “geofence warrant” sent to Google, Inc. in the Fall of 2018. The geofence warrant required Google to search Location History data in approximately 592 million accounts of its users, and then produce data from those devices that were using Google services within a geographic area within a window of time. Unlike a typical warrant, this geofence warrant did not identify the defendants in this case in any way (i.e. it did not ask for Location History for Jamarr Smith) – and of course it did not identify the 592 million persons whose devices were searched. Instead, the warrant operated in reverse: it required Google to search the 592 million devices, and then allowed the government the discretion to obtain private information of interest.

II.

Geofence warrants have been lately found to violate the Fourth Amendment on the basis that they are impermissible general warrants that unconstitutionally authorize a dragnet search of Google users; thus making them, by definition, without probable cause, overbroad and lacking

particularity as required by the Fourth Amendment. *See e.g. United States v. Chatrue*, 2022 WL 628905 (E.D. Va. March 3, 2022); *Matter of Search of Info. Stored at Premises Controlled by Google*, 481 F. Supp. 3d 730 (N.D. Ill. 2020); *In re Information Stored at Premises Controlled by Google*, 2020 WL 5491763 (N.D. Ill., July 8, 2020). This particular warrant was also defective due to misrepresentations in the probable cause statement, and the government's failure to use the "further legal process" that it said it would to obtain specific information about Google users made portions of the search warrantless and illegal.

III.

Since the geofence warrant in this case was unconstitutional, it is void from its inception. The Court should suppress all evidence derived from that warrant as fruit of the poisonous tree.

IV.

Jamarr Smith incorporates herein the following exhibits:

Exhibit A – Application for Search Warrant

Exhibit B – Affidavit in Support of Search Warrant Application

Exhibit C – Search and Seizure Warrant

Exhibit D – Report of Spencer McInville

Exhibit E – 04/26/2022 Discovery Letter

Exhibit F – 05/06/2022 Response to Discovery Letter

Exhibit G – 05/25/2022 Discovery Request

Exhibit H – 05/26/2022 Discovery Response

WHEREFORE, PREMSIES CONSIDERED, the Court should suppress the evidence that the government obtained pursuant to the warrant to Google at issue, and well as any other evidence derived from that information as fruit of the poisonous tree. Jamarr Smith requests any

further relief the Court may find warranted in the premises.

RESPECTFULLY SUBMITTED,

JAMARR SMITH

HICKMAN, GOZA & SPRAGINS, PLLC

Attorneys at Law

Post Office Drawer 668

Oxford, MS 38655-0668

(662) 234-4000 telephone

(662) 234-2000 facsimile

glewis@hickmanlaw.com

BY: /s/ Goodloe T. Lewis

GOODLOE T. LEWIS, MSB # 9889

CERTIFICATE OF SERVICE

I, GOODLOE T. LEWIS, attorney for JAMARR SMITH, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record, including:

Robert Mims
Office of the US Attorney
900 Jefferson Avenue
Oxford, MS 38655
rmims@usadoj.gov

DATED: November 4, 2022.

/s/ Goodloe T. Lewis
GOODLOE T. LEWIS

GOODLOE T. LEWIS, MSB # 9889
HICKMAN, GOZA & SPRAGINS, PLLC
Attorneys at Law
Post Office Drawer 668
Oxford, MS 38655-0668